

Salem Area Mass Transit District

Appendix A GENERAL TERMS AND CONDITIONS

In addition to the terms and conditions outlined the contract #26-006 SAMTD includes Appendix A (General Terms and Conditions) and Appendix B (Federal Terms and Conditions)- part of the final agreement between the selected parties. In the event of any conflict between the documents, the more restrictive term will prevail.

GC.1 Consultant's Status and General Responsibilities

Consultant is an independent Consultant for all purposes and is entitled to no compensation from SAMTD other than that provided by this Contract. Consultant shall inform SAMTD of Consultant's Federal Internal Revenue Service Employer Identification Number or, if Consultant is an individual with no employer identification number, Consultant's Social Security Number. The Consultant and its officers, employees, and agents are not in any way officers, employees or agents of SAMTD as those terms are used in ORS 30.265. The Consultant, its employees or officers shall not hold themselves out either explicitly or implicitly as officers, employees or agents of SAMTD for any purpose whatsoever, nor are they authorized to do so.

Consultant shall provide and pay for all labor, materials, equipment, utilities, and other goods or services necessary for full contract performance unless this Contract specifically provides otherwise. Consultant shall supervise and direct contract performance using its best skill, and shall be responsible for selecting the means of contract performance. If, during or after the term of this Contract, Consultant learns of any actual or potential defect in the services provided under this Contract, of any problem associated with the results of contract performance, or of any nonconformance with a provision of this Contract or of Federal, state, or local law, Consultant shall inform SAMTD immediately in writing with a full description of the defect, problem, or nonconformance.

GC.2 Notices and Communications

All notices and other communications concerning this Contract shall be written in English and shall bear the contract number assigned by SAMTD. Notices and other communications may be delivered personally, by facsimile, by email, by regular, certified or registered mail or other commercial delivery service.

Salem Area Mass Transit District

A notice to SAMTD will be effective only if it is delivered to that person designated in writing in either (a) the Notice of Award of this Contract, (b) the Notice to Proceed under this Contract, or (c) to another individual specifically designated for this purpose by this Contract. A notice to the Consultant shall be effective if it is delivered to the individual who signed this Contract on behalf of Consultant at the address shown with that signature, to a corporate officer if Consultant is a corporation, to a general partner if Consultant is a partnership, or to another individual designated in writing by the Consultant in the contract or in a written notice to SAMTD.

GC.3 Assignment and Subcontracting

Consultant shall not assign any of its rights or subcontract any of its responsibilities under this Contract without the prior written consent of SAMTD. Consultant shall include in each subcontract provisions necessary to make all of the provisions of this Contract fully effective and applicable to Consultant's subconsultants. Consultant shall provide all necessary plans, specifications, and instructions to its suppliers and subconsultants to enable them to properly perform their work.

The Consultant shall perform at least 25 percent (25%) of the work with their own organization. All subconsultants must be pre-approved by SAMTD before they begin work through an introduction to SAMTD PA and PMO staff. SAMTD reserves the right to investigate sub-Consultant responsibility prior to confirming award, if subconsultants are known. SAMTD will not approve change orders to the bid or final contract price for replacing rejected sub-Consultants.

Consultant shall be jointly and severally, and vicariously liable to SAMTD and responsible for the work of, including, but not limited to the adequacy, timeliness, efficiency, and sufficiency, its subconsultants. All subconsultants shall be jointly and severally liable to SAMTD and responsible for their work. SAMTD shall not be held responsible for the contractual relationship between subconsultants and Prime Consultants. The Prime Consultant shall maintain and monitor all subconsultant performance, payment, project delivery requirements, and relationships as they pertain to the Prime's ability to successfully complete a project. Failure of a Consultant to properly manage subconsultants resulting in project delays shall be considered breach of contract and subject to the rights and remedies outlined in the contract terms and conditions.

GC.4 Indemnification

Salem Area Mass Transit District

A. To the fullest extent permitted by law, Consultant agrees to fully indemnify, hold harmless, and defend SAMTD, its directors, officers, and employees from and against all claims, demands, losses, suits, damages, attorney fees, and costs of every kind and description and expenses incidental to the investigation and defense thereof, resulting from, any act, omission, fault or negligence of Consultant, its agents, Consultants, sub-Consultants, or employees in the performance or nonperformance of Consultant's obligations under this Contract. Should any incident be due to the joint and or concurrent negligence of the Consultant and SAMTD, all cost items identified above will be borne by the Consultant and SAMTD in proportion to their respective negligence.

The obligations of Consultant under this Section 4 will not in any way be affected or limited by the absence in any case of insurance coverage or by the failure or refusal of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting this Contract. In no way shall the Consultant limit its liability under this Contract.

B. This indemnity shall survive the termination of this Contract or final payment hereunder. This indemnity is in addition to any other rights or remedies which SAMTD and the other parties to be indemnified may have under the law or under this Contract. In the event of any claim or demand made against any party which is entitled to be indemnified hereunder, SAMTD may in its sole discretion reserve, retain or apply any monies due to the Consultant under the Contract for the purpose of resolving such claims; provided, however, that SAMTD may release such funds if the Consultant provides SAMTD with adequate assurance of the protection of SAMTD'S interests. SAMTD shall be the sole judge of whether such assurances are adequate.

GC.5 Prompt Payment

Consultant shall make payment promptly, as due, to all persons supplying to the Consultant labor or material for the performance of the work provided for in the Contract; pay contributions or amounts due the Industrial Accident Fund from the Consultant or subconsultant incurred in the performance of the Contract; and pay to the Department of Revenue all sums withheld from employees under ORS 316.167. ORS 279B.220.

Salem Area Mass Transit District

Consultant shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Consultant, of all sums that the Consultant agrees to pay for the services and all moneys and sums that the Consultant collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. ORS 279B.230

GC.6 Compliance with Laws and Regulations

Consultant shall adhere to all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Contract. The Consultant shall comply with the clauses required in every public contract entered into in the State of Oregon as set forth in ORS 279B.220, 279B.225, 279B.230, 279B.235, 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, each of which is incorporated herein by reference.

All subject employers working under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

GC.7 Liens Prohibited

Consultant shall not permit any lien or claim to be filed or prosecuted against SAMTD, its property or its right-of-way on account of any labor or material furnished or any other reason for work arising out of this Contract. If any lien shall be filed, Consultant shall satisfy and discharge or cause such lien to be satisfied and discharged immediately at Consultant's sole expense.

GC.8 Safety

Notwithstanding any safety provisions elsewhere in this Contract, and in addition to Consultant's own safety procedures, Consultant shall implement and enforce all safety requirements that are standard in the industry and/or that are required by SAMTD'S Safety Department.

GC.9 Prohibited Interests

Salem Area Mass Transit District

A. No SAMTD Board member, officer, employee or agent who ceases to hold a position at SAMTD shall have any direct beneficial financial interest in this Contract, if they authorized this Contract while acting in their official position at SAMTD, for two years after the date the contract was authorized. This precludes working on this Contract as Consultant's employee. The term "authorize" in this provision means that the Board member, officer, employee or agent ("public official") performed a significant role in the selection of the Consultant or the execution of this Contract, including recommending approval or signing of the Contract, serving on the selection committee or having the final authorizing authority for this Contract.

B. No SAMTD Board member, officer, employee, or agent (or any member of the immediate family or the partner of any of the aforementioned) shall solicit or accept, and Consultant (including any subconsultants) shall offer or give to any SAMTD Board member, officer, employee or agent (or any member of the immediate family or the partner of any of the aforementioned), any gratuities, favors, or anything of monetary value, in connection with the administration of this Contract, except to the extent permitted by applicable law and SAMTD policy.

GC.10 Integration, Modification, and Administrative Changes

This Contract includes the entire agreement of the parties and supersedes any prior discussions or agreements regarding the same subject. This Contract may be modified in writing by a modification that has been signed by individuals authorized to bind each of the parties contractually. SAMTD reserves the right to make administrative changes to the Contract unilaterally. An administrative change means a written contract change that does not affect the substantive rights of the parties.

GC.11 Severability/Survivability

If any of the provisions contained in this Agreement are held by a court of law or arbitrator to be illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired, and the parties shall negotiate an equitable adjustment of this Contract so that the purposes of this Contract are not affected. All provisions concerning indemnity survive the termination or expiration of this Contract for any cause.

GC.12 Waiver and Non-waiver

Salem Area Mass Transit District

A. A waiver by one party of a right to a remedy for breach of this Contract by the other party shall not be deemed to waive the right to a remedy for a subsequent breach by the other party. SAMTD'S acceptance of goods or services, or payment under this Contract, shall not preclude SAMTD from recovering against Consultant or Consultant's surety for damages due to Consultant's failure to comply with this Contract.

B. Both parties having had the opportunity to consult an attorney regarding the provisions of this Contract, the parties agree to waive the principle of contract interpretation that an ambiguity will be construed against the party that drafted the ambiguous provision.

GC.15 Inspection of Goods and Services

A. SAMTD has the right to inspect and test all goods/services called for under the Contract, to the extent practicable, at all times and places during the term of the Contract. SAMTD shall perform inspections and tests in a manner that will not unduly delay the work.

B. If any of the goods or services do not conform with contract requirements, SAMTD may require the Consultant to replace the goods or perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in goods or services cannot be corrected by re-performance, SAMTD may (1) require the Consultant to take necessary action to ensure that future performance conforms to contract requirements and (2) reduce the contract price to reflect the reduced value of the goods/services performed.

C. If the Consultant fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, SAMTD may (1) by contract or otherwise, perform the services and charge to the Consultant any cost incurred by SAMTD or (2) terminate the Contract for default.

GC.16 Acceptance, Rejection, and Revocation of Acceptance

Salem Area Mass Transit District

If this Contract is for the supply of goods, then SAMTD shall be deemed to have accepted goods only after the goods have been delivered by Consultant, and SAMTD has had a reasonable opportunity after delivery to inspect the goods. Prior to acceptance, SAMTD may reject any goods that fail to conform to the requirements of this Contract. SAMTD may revoke its acceptance of goods that fail to conform to this Contract if the failure to conform was not reasonably discoverable by ordinary pre-acceptance inspection or evaluation. Acceptance may be revoked under this Paragraph even if SAMTD has started using the goods before discovering that they do not conform to the Contract. Upon request by SAMTD, Consultant shall replace or repair to SAMTD'S satisfaction any goods that have been rejected by SAMTD or the acceptance of which has been revoked by SAMTD under this Paragraph. Failure to replace or repair those goods within a reasonable time after SAMTD'S request shall be a material breach of this Contract.

GC.17 Title and Risk of Loss

If this Contract is for the supply of goods, Consultant shall bear the risk of loss until the goods have been delivered to the site designated by SAMTD and an authorized SAMTD employee or agent has taken possession of them. Title to goods shall pass to SAMTD upon SAMTD'S payment for those goods. If this Contract is for the rental or lease of Consultant's goods, the Consultant shall bear the risk of loss to Consultant's goods. The Consultant agrees to carry insurance to cover any such losses. Title to the Consultant's goods shall remain with Consultant while goods are in SAMTD'S possession. If this Contract is for the repair or servicing of SAMTD owned goods, Consultant shall bear the risk of loss until the goods have been delivered to the site designated by SAMTD and an authorized SAMTD employee or agent has taken possession of them. Title to SAMTD owned goods shall remain with SAMTD while goods are in Consultant's possession. Consultant agrees to carry insurance to cover any losses/damages to SAMTD'S goods while in Consultant's possession.

GC.18 Work Product

Salem Area Mass Transit District

All work product of Consultant that results from this Agreement (the "Work Product") is the exclusive property of SAMTD. Work Product shall include but not be limited to all data, information in any form, documents, research, analysis and other any work subject to intellectual property laws and doctrines. SAMTD and Consultant intend that such Work Product be deemed "work for hire" of which SAMTD shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Consultant hereby irrevocably assigns to SAMTD all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Consultant shall execute such further documents and instruments as SAMTD may reasonably request in order to fully document such vested rights in SAMTD. Consultant forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC Section 106A or any other rights of identification or authorship or rights of approval, restriction or limitation on use or subsequent modifications.

GC.20 Mediation

In addition to the Disputes Clause outlined in Appendix C - Federal Terms and Conditions. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it may by mutual agreement be submitted to mediated negotiation prior to any party commencing litigation. The mediator's fees and costs shall be borne equally by the parties.

GC.21 Nondiscrimination

During the term of this Contract, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, sexual orientation, disability, or national origin.

GC.22 Applicable Law and Jurisdiction

This Contract shall be governed by the State of Oregon law, without resort to any jurisdiction's conflicts of law principles, rules or doctrines. Any suit or action arising from this Contract shall be commenced and prosecuted in the courts of Marion County, Oregon or the U.S. District Court for the District of Oregon, in Salem, Oregon, as applicable. The parties agree to submit to the jurisdiction and venue of these courts.

GC.23 Paragraph Headings and Other Titles

The parties agree that paragraph headings and other titles used in this Contract are for convenience only, and are not to be used to interpret this Contract.

GC.24 Insurance

Salem Area Mass Transit District

GC.25 Insurance

During the term of this Contract, Consultant shall purchase and maintain any insurance required by this Contract. Consultant shall furnish acceptable certificates of insurance and additional insured endorsements to SAMTD within ten (10) days after award of this Contract, and prior to commencement of any contract work.

Consultant shall be responsible for the payment of all premiums and deductibles and shall indemnify SAMTD for any liability or damages that SAMTD may incur for any reason arising from this contract including Consultant's failure to purchase or maintain any required insurance.

A. Minimum Scope and Limit of Insurance

Consultant shall maintain coverage at least as broad as the insurance types and amounts described below.

1) Commercial General Liability Insurance

Consultant shall provide Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to SAMTD. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this Contract, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written using Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, with limits no less than \$2,000,000 per occurrence and not less than \$3,000,000 annual aggregate limit.

2) Business Auto Liability Insurance

Automobile bodily injury and property damage liability insurance, on ISO Form CA 00 01, covering all motor vehicles, whether owned, non-owned, leased, or hired, with a combined single limit of not less than \$2,000,000. Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

3) Workers' Compensation & Employer's Liability Insurance

Salem Area Mass Transit District

All employers, including Consultant, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017, and provide Workers' Compensation Insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Consultant shall require and ensure that each of its subconsultants complies with these requirements. If Consultant is a subject employer, as defined in ORS 656.023, Consultant shall also obtain Employers' Liability Insurance coverage with limits not less than \$500,000 each accident.

If Consultant is an employer subject to any other state's Workers' Compensation law, Contactor shall provide Workers' Compensation Insurance coverage for its employees as required by applicable Workers' Compensation laws including Employers' Liability Insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subconsultants complies with these requirements.

Consultants who are non-subject workers meeting one of the exceptions in ORS 656.027 may not be required to carry workers compensation insurance. Any Consultant requesting an exemption from the workers compensation coverage listed above must make that request in writing, stating the Consultant's qualification for exemption under ORS 656.027 and shall maintain "if any" workers compensation insurance coverage.

B. Specialized Scope and Limits of Insurance

Other required insurance coverages may be required based on the type of services and product provided through this contract. If required, Consultant shall maintain coverage at least as broad as the insurance types and amounts described below.

1) Professional Liability Insurance

Consultant shall provide Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Contract by the Consultant and Consultant's subconsultants, agents, officers or employees in an amount not less than \$2,000,000 per claim and not less than \$3,000,000 annual aggregate limit.

C. Other Insurance provision required under this Section:

1) Primary and Non-Contributory Coverage

For any claims related to this contract, the Consultant's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects SAMTD, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by SAMTD and its directors, officers, representatives, agents, volunteers and employees shall be excess of the Consultant's insurance and shall not contribute with it. This requirement shall also apply to any Excess Liability policies. This must be noted on the insurance certificate.

Any damages arising out of a loss are the Consultant's responsibility whether or not underlying insurance has sufficient limits. If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, SAMTD shall be entitled to the broader coverage and/or the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to SAMTD.

2) Excess Policy

The Consultant may use Excess Insurance to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Excess Policies evidence all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess insurance policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Consultant's primary and excess liability policies are exhausted.

3) Waiver of Subrogation

Consultant hereby grants to SAMTD a waiver of any right to subrogation which any insurer of said Consultant may acquire against SAMTD by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not SAMTD has received a waiver of subrogation endorsement from the insurer.

4) Acceptability of Insurers

Salem Area Mass Transit District

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to SAMTD.

5) Special Risks or Circumstances

SAMTD reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

6) Certificate(s) and Proof of Insurance/Verification

Consultant shall provide to SAMTD Certificate(s) of Insurance at procurement@cherriots.org for all required insurance before delivering any goods and performing any services required under this contract. The Certificate(s) of Insurance must list SAMTD as a Certificate holder. The Certificate(s) of Insurance must also include all required endorsements or copies of the applicable policy language affecting coverage required by this Contract. If excess Insurance is used to meet the minimum insurance requirement, the Certificate(s) of Insurance must include a list of all policies that fall under the Excess Insurance. As proof of insurance, SAMTD has the right to request copies of insurance policies and endorsements relating to the insurance requirements under this contract for the purpose of coverage verification.

Failure of SAMTD to demand certificates of insurance, additional insured endorsements or other evidence of full compliance with these insurance requirements or failure of SAMTD to identify a deficiency from evidence that is provided shall not be construed as a waiver of Consultant's obligation to maintain such insurance.

7) Notice of Cancellation/Change in Coverage

Each insurance policy required above shall state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed except after thirty (30) days' prior written notice has been given to SAMTD, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium. Prior written notice shall be sent to SAMTD pursuant to the Notices/Ship To provisions of this agreement.

8) Subconsultants

Salem Area Mass Transit District

Consultant shall require and verify that all subconsultants maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that SAMTD is an additional insured on insurance required from subconsultants.

9) Additional Insured Status

All liability insurance, except for Workers' Compensation, Professional Liability, Directors and Officers Liability and Network Security and Privacy Liability (if applicable), required under this Contract must include an Additional Insured endorsement specifying SAMTD and its directors, officers, representative, agents, volunteers and employees as Additional Insureds, but only with respect to Consultant's goods to be delivered and Services to be performed under this Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

The Additional Insured endorsement with respect to liability arising out of Consultant's ongoing operations must be on, or at least as broad as, ISO Form CG 20 10 and the Additional Insured endorsement with respect to completed operations must be on, or at least as broad as ISO form CG 20 37.

10) Failure to Maintain Insurance Coverage

If Consultant, for any reason, fails to maintain insurance coverage which is required pursuant to this contract, the same shall be deemed a material breach of contract. SAMTD, at its sole option, may terminate this contract and obtain damages from the Consultant resulting from said breach. Alternatively, SAMTD may purchase such coverage (but has no special obligation to do so), and without further notice to Consultant, the SAMTD may deduct from sums due to Consultant any premium costs advanced by SAMTD for such insurance.

11) Special Risks or Circumstances

SAMTD reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

APPENDIX B - FEDERAL TRANSIT ADMINISTRATION (FTA) CONTRACT CLAUSES

This Contract is funded in part under a financial assistance agreement between Salem Area Mass Transit District and the U.S. Department of Transportation, Federal Transit Administration (FTA). This Contract is subject to all provisions prescribed for third party contracts by that financial assistance agreement, including, but not necessarily limited to, the provisions below. Unless otherwise specified, all terms of this Section shall include all supplier and subcontractor agreements.

Except as FTA determines otherwise in writing, the Contractor must comply with all applicable federal laws, regulations, and requirements, and should follow applicable federal guidance. FTA may take enforcement action if the Contractor violates an applicable federal law, regulation, or requirement, or does not follow applicable federal guidance.

The following terms are non-negotiable without prior written approval for the US Department of Transportation.

FLY AMERICA REQUIREMENTS

49 U.S.C. § 40118

41 C.F.R. §§ 301-10.131 – 301-10.143

Applicable to: *Contracts that have transportation of persons or shipment of agency property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the grant pays for this activity. Contractors are responsible for ensuring that all subcontractors are in compliance.*

Applies to: *All contracts: Contractors and subcontractors.*

The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation. The Contractor agrees to include substantially similar provisions in its contracts with subcontractors.

Salem Area Mass Transit District

BUY AMERICA REQUIREMENTS

49 U.S.C. §
5323(j)
49 C.F.R. Part 661
49 U.S.C. § 24405(a)

Applicable to: All federally assisted procurements of **steel, iron, manufactured goods, and construction materials.**

Applies to: Contractors and subcontractors.

The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provides that Federal funds may not be obligated unless steel, iron, construction materials, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the Secretary of Transportation or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have 70 percent or more domestic content. A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification with all bids and proposals on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. The Contractor agrees to include a substantially similar provision in its contracts with subcontractors.

BUY AMERICA PRE-AWARD AND POST-DELIVERY ROLLING STOCK AUDITS

49 U.S.C. § 5323(m)

Applicable to: All contracts for the purchase or lease of rolling stock.

Applies to: Contractors.

Part 663 of Title 49, Code of Federal Regulations, does not contain specific language to be included in third party contracts but does contain requirements applicable to subrecipients and third party contractors. Recipients are advised to use the model certificates and language contained in the audit handbook. Additionally, recipients can draw on the following language for inclusion in their federally funded procurements.

Pre-Award and Post-Delivery Audit Requirements

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

Salem Area Mass Transit District

CARGO PREFERENCE REQUIREMENTS

46 U.S.C. § 55305

46 C.F.R. Part 381

Applicable to: *All contracts involving equipment, materials, or commodities which may be transported by ocean vessels.*

Applies to: *Contractors and subcontractors.*

Use of United States-Flag Vessels. The Contractor agrees:

8. To use privately owned United States-Flag commercial vessels to ship at least 50 percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
9. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington D.C. 20590 and the FTA recipient (through the Contractor in the case of a subcontractor's bill of lading.)
10. To include these requirements in all subcontracts issued pursuant to the contract when the subcontract may involve the transport of equipment, materials, or commodities by ocean vessel.

SEISMIC SAFETY REQUIREMENTS

42 U.S.C. §§ 7701–7709

49 C.F.R. Part 41

Applicable to: *All contracts for Architect and Engineering (A&E) services and construction of new buildings and additions to existing buildings.*

Applies to: *Contractors and subcontractors*

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

Salem Area Mass Transit District

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. §§ 6321–6327
49 C.F.R. Part 622 Subpart C

Applicable to: All contracts.

Applies to: Contractors and subcontractors.

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The Contractor also agrees to include a substantially similar provision in its contracts with subcontractors.

ENVIRONMENTAL REQUIREMENTS

Applicable to: All contracts and subcontracts.

Applies to: Contractors and subcontractors.

6. General. The Contractor agrees to comply with all applicable environmental and resource use laws, regulations, requirements, and guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, requirements and guidance. The Contractor also agrees to include substantially similar provisions in its contracts with subcontractors.
7. National Environmental Policy Act. An Award of federal assistance requires the full compliance with applicable environmental laws, regulations, requirements, and guidance. Accordingly, the Contractor will:
 - a. Comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to:
 - i. Federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139,
 - ii. The National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321 *et seq.*, as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. part 1500-1508,
 - iii. Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. part 771 and 49 C.F.R. part 622,
 - iv. Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note, and
 - v. Other federal environmental protection laws, regulations, and requirements applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.
 - b. Follow the federal guidance identified herein to the extent that the

Salem Area Mass Transit District

guidance is consistent with applicable authorizing legislation:

- i. Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319 Accelerated Decision making in Environmental Reviews," January 14, 2013,
- ii. Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Pub. L. 109-59)," 71 *Fed. Reg.* 66576, November 15, 2006, and
- iii. Other federal environmental guidance applicable to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto.

8. Environmental Justice. The Contractor agrees to promote environmental justice by following:
 - a. Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42 U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order,
 - b. U.S. DOT Order 5610.2, "Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377, April 15, 1997, and
 - c. The most recent edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable federal laws, regulations, requirements, and guidance.
9. Other Environmental Federal Laws. The Contractor agrees to comply with all applicable federal laws, regulations, executive orders, and guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, and Executive Order Nos. 11988 and 13690 relating to "Floodplain Management."
10. Use of Certain Public Lands. The Contractor with U.S. DOT laws, specifically 49 U.S.C. § 303 (often referred to as "section 4(f)"), and joint FHWA and FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. part 774, and referenced in 49 C.F.R. part 622.
11. Historic Preservation. The Contractor agrees to:
 - a. Comply with U.S. DOT laws, including 49 U.S.C. § 303 (often referred to as "section 4(f)"), which requires certain findings be made before an Award involving the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places may be

Salem Area Mass Transit District

undertaken.

- b. Encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108.
 - c. Comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501 *et seq.*
 - d. Comply with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic Properties," 36 C.F.R. part 800.
 - e. Comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
12. Indian Sacred Sites. The Contractor agrees to facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, "Indian Sacred Sites," May 24, 1996, 42 U.S.C. § 3161 note.
13. Mitigation of Adverse Environmental Effects.
- a. The Contractor agrees that it will comply with all environmental mitigation measures that may be identified as conditions that the Federal Government might impose in finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Award, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents.
 - b. The Contractor agrees that:
 - i. Any mitigation measures agreed on will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto,
 - ii. Any deferred mitigation measures will be incorporated by reference and made part of the Underlying Agreement and any Amendments thereto as soon as agreement with the Federal Government is reached, and
 - iii. Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the Federal Government.

14. Clean Air & Water Pollution Control Act

The Contractor agrees:

- (1) It will not use any violating facilities;
- (2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities;"

Salem Area Mass Transit District

- (3) It will report violations of use of prohibited facilities to FTA; and
- (4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

The Contractor agrees to include substantially similar provisions in its contracts with subcontractors.

LOBBYING RESTRICTIONS

49 C.F.R. Part 20

Applicable to: *Contracts exceeding \$100,000.*

Applies to: *Contractors and subcontractors.*

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any WTA, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

ACCESS TO RECORDS AND REPORTS

49 U.S.C. § 5325

Former 49 C.F.R. § 18.36 (i)

49 C.F.R. § 633.17

Applicable to: *All contracts.*

Applies to: *Contractors and subcontractors.*

The following access to records requirements apply to this Contract:

7. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee/subrecipient of SAMTD in accordance with 49 C.F.R. § 18.36(i), the Contractor agrees to provide SAMTD, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. § 633.17 to provide the FTA Administrator or his authorized representatives including any PMO

Salem Area Mass Transit District

Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309, or 5311.

8. When applicable, SAMTD or a subgrantee/subrecipient of the SAMTD in accordance with 49 U.S.C. § 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. § 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to SAMTD, the Secretary of Transportation, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection. (If applicable).
9. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
10. The Contractor agrees to maintain all books, records, accounts, and reports required under this contract for a period of not less than seven years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until SAMTD, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 C.F.R. § 18.39(i)(11).
11. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

CHANGES TO FEDERAL REQUIREMENTS

Former 49 C.F.R. Part 18

Applicable to: All contracts.

Applies to: Contractors and subcontractors.

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by

Salem Area Mass Transit District

reference in the Master Agreement (FTA MA (31) dated May 2, 2024) between SAMTD and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to comply shall constitute a material breach of this contract. The Contractor agrees to include a substantially similar provision in its contracts with subcontractors.

RECOVERED MATERIALS & SOLID WASTE

42 U.S.C. § 6962
40 C.F.R. Part 247

Applicable to: *All contracts for items designated by the EPA on contracts for materials, supplies, construction and/or operations management,, when the purchaser or contractor procures \$10,000 or more of one of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.*

Applies to: *Contractors and subcontractors.*

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 U.S.C. §§3701-3708
29 C.F.R. part 1926

Applicable to: *All contracts for operations and management, rolling stock and construction exceeding \$100,000.*

Applies to: *Contractors and subcontractors.*

The Contractor agrees to comply with the following, in accordance with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701–3708) and U.S. Department of Labor regulations (29 C.F.R. part 5):

1. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and

Salem Area Mass Transit District

any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

3. **Withholding for unpaid wages and liquidated damages** - SAMTD shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicable to: All contracts.

Applies to: All parties to the contract to which the Federal Government does not have contractual liability, absent specific written consent.

4. SAMTD and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
5. The Contractor agrees to include the above clause in each subcontract financed in

Salem Area Mass Transit District

whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

31 U.S.C. §§ 3801–3812

49 C.F.R. Part 31

18 U.S.C. § 1001

Applicable to: All contracts.

Applies to: Contractors and subcontractors..

3. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801–3812 and U.S. DOT regulations “Program Fraud Civil Remedies,” 49 C.F.R. part 31, apply to its actions pertaining to this contract. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
4. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 on the Contractor, to the extent the Federal Government deems appropriate.
5. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION

Former 49 C.F.R. Part 18

FTA Circular 4220.1F

Applicable to: All contracts in excess of \$10,000.

Applies to: All contractors and subcontractors.

The Contractor acknowledges and agrees to the following, and agrees to include a substantially similar provision in its contracts with subcontractors:

1. **Termination for Convenience (General Provision):** SAMTD may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to SAMTD to be paid by the Contractor. If the Contractor has any property in its possession belonging to SAMTD, the Contractor will account for the same, and dispose of it in the manner SAMTD directs.
2. **Termination for Default [Breach or Cause] (General Provision):** If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, SAMTD may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by SAMTD that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, SAMTD, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

3. **Opportunity to Cure (General Provision):** SAMTD in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to SAMTD's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from SAMTD setting forth the nature of said breach or default, SAMTD shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude SAMTD from also pursuing all available remedies against Contractor and its sureties for said breach or default.

4. **Waiver of Remedies for any Breach:** In the event that SAMTD elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by SAMTD shall not limit SAMTD's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.
5. **Termination for Default (Construction):** If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, SAMTD may terminate this contract for default. SAMTD shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, SAMTD may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to SAMTD resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Recipient in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if-

- a. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Recipient, acts of another Contractor in the performance of a contract with the Recipient, epidemics, quarantine restrictions, strikes, freight embargoes; and
- b. the contractor, within [10] days from the beginning of any delay, notifies SAMTD in writing of the causes of delay. If in the judgment of SAMTD, the delay is excusable, the time for completing the work shall be extended. The judgment of SAMTD shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Recipient.

GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

2 C.F.R. Part 180

2 C.F.R. Part 2100

Salem Area Mass Transit District

Applicable to: All contracts and subcontracts in excess of \$25,000.

Applies to: Contractors and subcontractors.

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

5. Debarred from participation in any federally assisted Award;
6. Suspended from participation in any federally assisted Award;
7. Proposed for debarment from participation in any federally assisted Award;
8. Declared ineligible to participate in any federally assisted Award;
9. Voluntarily excluded from participation in any federally assisted Award; or
10. Disqualified from participation in any federally assisted Award.

It will include similar provisions in its contracts with Subcontractors and include Subcontractors to include similar provisions in their contracts with lower-tier Subcontractors; and

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by SAMTD. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available SAMTD, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

CIVIL RIGHTS REQUIREMENTS

42 U.S.C. § 2000
 42 U.S.C. § 6102, 42 U.S.C. § 12101 et seq.
 49 U.S.C. § 5332
 29 C.F.R. Part 1630, 41 C.F.R. Parts 60 et seq.
 28 C.F.R. § 50.3

Applicable to: All contracts.

Salem Area Mass Transit District

Applies to: *Contractors and subcontractors.*

The Contractor agrees to the following, and also agrees to include these provisions in its contracts with subcontractors:

Civil Rights Requirements. The Contractor agrees that it must comply with applicable federal civil rights laws, regulations, requirements, and guidance, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Tribal Transit Program or the Indian Tribe Recipient, is specifically exempted from a civil rights statute, FTA requires compliance with that civil rights statute, including compliance with equity in service.

Nondiscrimination in Federal Public Transportation Programs. The Contractor agrees that it will:

1. Prohibit discrimination based on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, disability, or age.
2. Prohibit the:
 - a. Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332,
 - b. Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332, or
 - c. Discrimination, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.
3. Follow:
 - a. The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, and other applicable federal guidance that may be issued, but
 - b. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.

Nondiscrimination – Title VI of the Civil Rights Act. The Contractor agrees that it will:

1. Prohibit discrimination based on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, disability, or age,
2. Comply with:
 - a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*,
 - b. U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and
 - c. Federal transit law, specifically 49 U.S.C. § 5332, and
3. Follow:

Salem Area Mass Transit District

- a. The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance,
- b. U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and
- c. All other applicable federal guidance that may be issued.

Equal Employment Opportunity.

1. Federal Requirements and Guidance. The Contractor agrees that it will prohibit discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
 - a. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*,
 - b. Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,
 - c. Comply with federal transit law, specifically 49 U.S.C. § 5332
 - d. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients," July 26, 1988, and
 - e. Follow other federal guidance pertaining to Equal Employment Opportunity laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability,
2. Specifics. The Contractor Agrees that it will:
 - a. Prohibited Discrimination. As provided by Executive Order No. 11246, as amended by any later Executive Order that amends or supersedes it, and as specified by U.S. Department of Labor regulations, ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their race, color, religion, national origin, disability, age, sexual orientation, gender identity, or status as a parent,
 - b. Affirmative Action. Take affirmative action that includes, but is not limited to:
 - A. Recruitment advertising, recruitment, and employment,
 - B. Rates of pay and other forms of compensation,
 - C. Selection for training, including apprenticeship, and upgrading, and
 - D. Transfers, demotions, layoffs, and terminations, but
 - c. Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and

BREACHES AND DISPUTE RESOLUTION

Former 49 C.F.R. Part 18
FTA Circular 4220.1F

Applicable to: All contracts in excess of \$100,000.

Salem Area Mass Transit District

Applies to: Contractors and subcontractors.

Disputes - Disputes arising in the performance of this Contract, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of SAMTD's General Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the General Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the General Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

1. **Performance During Dispute** - Unless otherwise directed by SAMTD, Contractor shall continue performance under this Contract while matters in dispute are being resolved.
2. **Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.
3. **Remedies** - Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matters in question between SAMTD and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which SAMTD is located.
4. **Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by SAMTD, Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

PATENT AND RIGHTS IN DATA

35 U.S.C. §§ 200 – 212
37 C.F.R. Part 401

Applicable to: All contracts for professional services involving research and development of a good or service for the agency, or contracts for IT software.

Applies to: Contractors and subcontractors.

1. **Rights in Data** - These following requirements apply to each contract involving

experimental, developmental or research work:

- a. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- b. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - i. Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - ii. The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.
 - iii. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental, developmental, or research work required by the underlying contract to which

this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- iv. Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - v. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - vi. Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work.
 - vii. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- c. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e. , a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor

Salem Area Mass Transit District

agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. part 401.

- d. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 C.F.R. Part 26
Section 1101(b) of the FAST Act

Applicable to: All contracts.

Applies to: Contractors and subcontractors

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for DBE participation is 10%. SAMTD's overall goal for DBE participation is 2.49%. **A separate contract goal has not been established for this procurement.**

A DBE must be certified by the Certification Office for Business Inclusion and Diversity. <https://oregon4biz.diversitysoftware.com/>. DBE firms shall have equal opportunity to compete for and perform as prime contractors, suppliers, or as subcontractors through another awarded contractor.

- A. Proposers are required to make good faith efforts in recruiting DBE's and SBE's in the preparation of their bids Examples of good faith efforts to be demonstrated and documented by the prime contractor include the following:
 1. Attendance at any pre-solicitation or pre-bid meetings that were scheduled by SAMTD to inform DBEs of contracting and subcontracting opportunities
 2. Advertisement in general circulation, trade association and minority-focused media concerning the sub-contracting opportunities
 3. Provision of written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBE to participate effectively (and documenting the contact)
 4. Follow-up of initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested
 5. Provision to interested DBEs of adequate information about the plans, specifications and requirements of the contract (and maintaining record of such contract)
 6. Negotiation in good faith with interested DBEs not rejecting DBEs as unqualified

Salem Area Mass Transit District

without sound reasons based on a thorough investigation of their capabilities (and be able to document any “unqualified”)

7. Soliciting the aid of available minority community organizations; minority contractors' groups, local, state and federal minority business assistance officers; and other organizations that provide assistance in the recruitment and placement of DBEs (and be able to furnish records of such solicitation)
8. Efforts to select portions of the work proposed to be performed to increase the likelihood of DBE Participation
9. Efforts to negotiate for specific sub Proposals, including at a minimum:
 - a. The name, address, or telephone number of each DBE contacted;
 - b. A description of the information provided regarding the plans and specifications for the portions of the work to be performed;
 - c. A statement of why additional agreements were not reached;
 - d. Reasons for rejecting as unqualified any DBE contacted
10. Use of the Oregon Department of Consumer & Business Services Certified DBE Directory
11. Efforts to provide assistance in obtaining any necessary bonding or insurance;
12. Efforts to use the service of banks owned and controlled by minorities or women;
13. Efforts to assist the DBE in purchasing materials and supplies; and
14. Any other affirmative action efforts

Contractor Requirements

- A. Reporting Requirements: The Contractor will be required to report its DBE participation obtained through race-neutral means throughout the period of contract performance. This report will include the business name and address, amount of the sub-contract, amount and date of payments.

Proposers are required to document all good faith efforts at utilizing DBE's and SBE's (Outreach & Participation Schedule). Good faith efforts will be maintained and available upon request. A separate DBE Unavailability Certification is required for each DBE contractor contacted but unable to participate in the project.

Proposers will submit, with their proposal, a Determination of Good Faith Effort. Failure to include the determination will be cause for proposal rejection.

A Statement of Intent is required from all DBE's that will be subcontracted work on this contract

The successful contractor will be required to submit a Prompt Payment Certification (provided to awarded contractor) and supporting documentation with each Progress Payment. Cherriots DBELO reserves the right to interview subcontractors to verify the information submitted on the Certification.

- B. Prompt Payment: The prime contractor agrees to pay each subcontractor, if

Salem Area Mass Transit District

applicable, under this prime contract for the satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from SAMTD. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of WTA. This clause applies to both DBE and non- DBE sub-contractors. With each Request for Payment, Contractor will submit A Prompt Payment Certification as a condition of payment.

- C. Retainage: The prime contractor agrees to return retainage payments to each subcontractor within sixty (60) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of SAMTD. This clause applies to both DBE and non-DBE subcontracts.
- D. Monitoring and Enforcement: The prime contractor shall notify SAMTD'S DBELO in writing of any delay or postponement of payment beyond thirty (30) days and such written notification shall set forth, with appropriate documentation, the full details of the reasons upon which the prime contractor is basing its actions. SAMTD shall not be obligated to make a progress payment or final payment to a prime contractor who has failed to make payments promptly to its subcontractors, and for which WTA has made payment, without good cause. The remedies SAMTD has available to enforce the DBE requirements contained in its contracts include, but are not limited to, the following:
 - 1. Breach of contract action pursuant to the terms of the contract. The intent of proceeding will be to initiate corrective action on the part of the contractor. If the corrective action is not implemented, the contractor will be terminated in accordance with the terms of the contract.
 - 2. Inform the Oregon Department of Transportation and FTA of any false, fraudulent, or dishonest conduct regarding the DBE Program. Beyond the power of SAMTD within the contract terms, the Federal government has available the following mechanisms that apply to firms participating in the DBE program:
 - a. Suspension or debarment proceedings pursuant to 49 CFR Part 26.
 - b. Enforcement action pursuant to 49 CFR Part 31.

The Contractor will promptly notify SAMTD'S DBELO whenever a subcontractor performing work related to this contract is terminated or fails to complete its work. The contractor must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of SAMTD.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

Salem Area Mass Transit District

Applicable to: All contracts.

Applies to: Contractors and Subcontractors

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SAMTD requests which would cause SAMTD to be in violation of the FTA terms and conditions. The Contractor agrees to include a substantially similar provision in its contracts with subcontractors.

AMERICANS WITH DISABILITIES ACT (ADA)

Applicable to: All contracts.

Applies to: Contractors and subcontractors.

The Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 C.F.R. part 27; and any implementing requirements FTA may issue. These regulations provide that no handicapped individual, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity included in or resulting from this Agreement.

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112 and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Contractor agrees that it will comply with the requirements of U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37; and U.S. Department of Transportation regulations, "Americans with Disabilities Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38, pertaining to facilities and equipment to be used in public transportation. In addition, the Contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (b)(6), which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly persons and persons with disabilities. Contractor also agrees to comply with any implementing requirements FTA may issue.

In addition to the above, the Contractor agrees to comply with the following federal prohibitions against discrimination on the basis of disability:

Salem Area Mass Transit District

A. Federal laws, including:

- a. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities,
- b. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and
- c. Other applicable federal laws, regulations and requirements pertaining to access for seniors or individuals with disabilities.

B. Federal regulations, including:

- a. U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39,
- b. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35,
- c. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36,
- d. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630,
- e. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, subpart F,
- f. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and
- g. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and
- h. Other applicable federal civil rights and nondiscrimination guidance.

The contractor understands that it is required to include this article in all subcontracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

**PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO
SURVEILLANCE SERVICES OR EQUIPMENT**

2 C.F.R. § 200.216

Applicable to: All contracts.

Applies to: Contractors and subcontractors.

SAMTD is prohibited from obligating or expending loan or grant funds to procure, obtain, enter into a new contract, or extend or renew a contract for equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei

Salem Area Mass Transit District

Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (2) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also 2 CFR § 200.471.

NOTIFICATION OF LEGAL MATTERS

Applicable to: All contracts.

Applies to: Contractors and subcontractors.

Contractor agrees to notify SAMTD immediately if it becomes involved in a current or prospective legal matter that may affect the Federal Government, which includes, but is not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or where the Federal Government may be named as a party to litigation or a legal disagreement in any forum for any reason.

The Contractor will immediately notify SAMTD if it has knowledge of potential fraud, waste, or abuse occurring in relation to this Contract. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law

Salem Area Mass Transit District

pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

SAMTD reserves the right to seek all remedies available to it under law, including to procure substitute services or products elsewhere and recover its damages, attorneys' fees and costs from Contractor.

TRAFFICKING IN PERSONS

Applicable to: All contracts.

Applies to: Contractors and subcontractors.

Contractor agrees that it and its employees that participate in SAMTD's Contract Award, may not:

5. Engage in severe forms of trafficking in persons during the contract period including all extensions or while SAMTD's Federal Award is in effect,
6. Procure a commercial sex act during the contract period including all extensions or while SAMTD's Federal Award is in effect, or
7. Use forced labor in the performance of SAMTD's contract or any sub agreements thereunder.

SAFE OPERATION OF MOTOR VEHICLES

Applicable to: All contracts.

Applies to: Contractors and subcontractors.

Seat Belt Use

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or SAMTD.

Distracted Driving

Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by Contractor, and driving a vehicle the driver owns or rents,

Salem Area Mass Transit District

a vehicle SAMTD owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the project, or when performing any work for or on behalf of the project;

CONTRACTOR agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Applicable to: All contracts for Intelligent Transportation Systems (ITS) and ITS components. (ie. CAD/AVL, transit signal priority, real passenger transit information)

Applies to: Contractors and subcontractors.

The contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 and as amended by MAP-21 23 U.S.C. § 517(d), note and follow the provisions of FTA Notice, “FTA National Architecture Policy on Transit Projects,” 66 Fed. Reg. 1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333
29 C.F.R. Part 215

Applicable to: All contracts as applicable.

Applies to: Contractors and subcontractors

Prevailing Wage Requirements

- a. Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA’s “Davis-Bacon Related Act”);
- b. The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147; and
- c. U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

“Anti-Kickback” Prohibitions

- a. Section 1 of the Copeland “Anti-Kickback” Act, as amended, 18 U.S.C. § 874;

Salem Area Mass Transit District

- b. Section 2 of the Copeland “Anti-Kickback” Act, as amended, 40 U.S.C. § 3145; and
- c. U.S. DOL regulations, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States,” 29 C.F.R. Part 3.

Contract Work Hours and Safety Standards

- a. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701-3708; and supplemented by Department of Labor (DOL) regulations, 29 C.F.R. part 5; and A-38
- b. U.S. DOL regulations, “Safety and Health Regulations for Construction,” 29 C.F.R. part 1926.

Non-Construction Service or Labor Contracts

Contractor will comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701, et seq., and U.S. DOL regulations, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 CFR Part 5.

Contractor will comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq. to the extent that the FLSA applies to employees performing work with federal assistance provided through the Underlying Agreement involving commerce, and as the Federal Government otherwise determines applicable.

DAVIS BACON & FEDERAL PREVAILING WAGE

Applicable to: All CONSTRUCTION related contracts over \$2,000.

Applies to: Contractors and subcontractors

Prevailing Wage and Anti-Kickback

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and

Salem Area Mass Transit District

Assisted Construction.” In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

CONTRACT WORK HOURS & SAFETY STANDARDS

Applicable to: All CONSTRUCTION related contracts or contracts for Mechanics over \$100,000.

Applies to: Contractors and subcontractors

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the Contractor shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor,

Salem Area Mass Transit District

or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in this section.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this agreement.

VETERAN'S PREFERENCE

Applicable to: All CONSTRUCTION related contracts.

Applies to: Contractors and subcontractors

As provided in 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients: (1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53; and (2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

APPENDIX C
SAMPLE CONTRACT
FOR
WEBSITE REDESIGN SELECTION

CONTRACT No. 26-006

This Contract is by and between Salem Area Mass Transit District ("SAMTD") and
_____ ("Contractor").

1. Term

Unless terminated sooner under the provisions of this Contract, the term of this Contract shall be 12 months from date of execution (2025-2026).

2. Contract Provisions

All provisions of the documents below are incorporated in this contract by reference. Any conflict between or among any of the documents listed below shall be resolved in accordance with the order of precedence set forth below.

- A. Written contract modifications executed by the parties after contract award,
- B. This contract form,
- C. Scope of Services as set forth in Exhibit A,

Salem Area Mass Transit District

- D. Compensation as set forth in Exhibit B,
- E. General Terms & Conditions as set forth in Exhibit D,

3. Scope of Services

Contractor shall perform the tasks identified in the Scope of Services set forth in Exhibit A, within the time frame and budget stated.

4. Compensation

Provided that Contractor fully and faithfully performs its obligations under this Agreement, SAMTD agrees to compensate Contractor in accordance with the rates set forth in Exhibit B.

Total Compensation under this Contract shall not exceed: \$150,000.

5. Tax Certification

Contractor hereby certifies, under penalty of perjury, that Contractor is, to the best of its knowledge, not in violation of any tax laws described in ORS 305.380(4).

CONTRACTOR

SALEM AREA MASS TRANSIT DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX D

INVOICING AND COMPENSATION

The below describes the invoice and compensation process.

Invoices must be sent to: accounts.payable@cherriots.org

1. Invoice Payments: Invoices will be no later than the 15th of each month for services and goods supplied the previous month. SAMTD reserves the right to refuse payment on invoices for work that completed sixty (60) days prior to invoice receipt. Payment will be based on Net thirty (30) day terms. SAMTD is open to negotiating different payment terms (i.e. 3% Net 15, etc.).

If submitted via hard copy, invoices must be submitted to SAMTD's Finance Department:

Salem Area Mass Transit District

Attn: Accounts Payable

555 Court St NE, Suite 5230

Salem, OR 97301

All invoices shall be submitted electronically to SAMTD's Finance Department and SAMTD's Project Manager via email to

1. accounts.payable@cherriots.org (Finance)
2. SAMTD Project Advisor

Salem Area Mass Transit District